

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

FELIX ALVAREZ,

Petitioner,

V.

LISA HOLLINGSWORTH, (Warden)
United States of America,

Respondent.

CASE NO. 4:11CV3170

MEMORANDUM AND ORDER

This matter is before the court on Petitioner's Affidavit filed February 9, 2012. (Filing No. [11](#).) Petitioner filed the Affidavit in response to the court's Memorandum and Order dated January 19, 2012. (See Filing No. [10](#).) In this Memorandum and Order, the court determined that Alvarez had filed an untimely Notice of Appeal in this matter. On the court's own motion, Petitioner was given an opportunity to show excusable neglect or good cause for failing to file a timely notice of appeal. (*Id.* at CM/ECF p. 2.)

The Eighth Circuit Court of Appeals has described the circumstances to consider when determining whether an individual has demonstrated excusable neglect. They include a danger of prejudice to the non-moving party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay (including whether it was within the reasonable control of the movant), and whether the movant acted in good faith. [Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 462 \(8th Cir. 2000\)](#), (internal citations and quotations omitted). Here, as best as the court can tell, Petitioner's Affidavit does not even address the fact that his Notice of Appeal was not timely filed. Rather, he generally alleges that prisoners at Leavenworth often have difficulty performing legal research and writing because of library closures, broken copy machines, and a lack of typewriters.

(Filing No. [11](#) at CM/ECF p. 2.) These statements do not demonstrate that Petitioner's failure to file a timely notice of appeal is for good cause or as a result of excusable neglect.

IT IS THEREFORE ORDERED that:

1. For the reasons set forth in the court's January 19, 2012, Memorandum and Order, Petitioner's Notice of Appeal is untimely. For the reasons set forth in this Memorandum and Order, Petitioner has not shown excusable neglect or good cause for failing to file a timely notice of appeal;
2. The Clerk of the court shall not process the appeal to the Court of Appeals; and
3. The Clerk of the court shall send a copy of this Memorandum and Order to the Clerk of the Eighth Circuit Court of Appeals.

DATED this 9th day of March, 2012.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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